



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0212; FRL-10878-01-OGC]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA), notice is given of a proposed settlement agreement in *Center for Biological Diversity v. Environmental Protection Agency*, Case No. 22-1164 (D.C. Cir.). On July 20, 2022, the Center for Biological Diversity (CBD) filed a petition for review in the United States District Court for the District of Columbia alleging that the Environmental Protection Agency (EPA or the Agency) failed to comply with the consultation requirements of the Endangered Species Act (ESA), the CAA, and the Administrative Procedures Act (APA) in promulgating the *Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, (July 1, 2022) (“2020–2022 RFS Annual Rule”). With the proposed settlement agreement, EPA would commit to complete its ESA consultation for the subsequent RFS rule proposed on December 30, 2022, the *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes*, (December 30, 2022) (“2023–2025 RFS Set Rule”), and CBD would agree to dismiss its challenge to the 2020–2022 RFS Annual Rule.

DATES: Written comments on the proposed settlement agreement must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0212, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Settlement Agreement” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Meredith G. Miller, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-8572; email address miller.meredith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Settlement Agreement

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0212) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement, and is available through https://www.regulations.gov. You may use https://www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Settlement Agreement

The RFS program began in 2006 pursuant to the requirements of the Energy Policy Act of 2005 (EPAAct) that were codified in CAA section 211(o). The statutory requirements were

subsequently amended by the Energy Independence and Security Act of 2007 (EISA). The RFS statute sets forth annual, nationally applicable volume targets for biomass-based diesel through 2012, and for the other three categories of renewable fuel—total renewable fuel, advanced biofuel, and cellulosic biofuel—through 2022. *See* 42 U.S.C. 7545(o)(2)(B)(i). For calendar years after which the statute provides volume targets, the statute directs EPA to determine the applicable volume targets in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the RFS program for prior years and an analysis of specific factors enumerated by 42 U.S.C. 7545(o)(2)(B)(ii) (e.g., impacts on the environment and energy security, costs to consumers, etc.).

On July 1, 2022, EPA published the RFS annual rules for 2020, 2021, and 2022. *Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, 87 FR 39600 (July 1, 2022) (“2020–2022 RFS Annual Rule”). On July 20, 2022, CBD filed a petition for review of the 2020–2022 RFS Annual Rule challenging whether EPA complied with the consultation requirements of ESA section 7(a)(2), 16 U.S.C. 1536(a)(2); the CAA, 42 U.S.C. 7545(o)(2)(B)(ii)(I); and the APA, 5 U.S.C. 706. On September 27, 2022, CBD filed a motion for summary vacatur of the 2020–2022 RFS Annual Rule. *Center for Biological Diversity v. Environmental Protection Agency*, Case No. 22-1164 (D.C. Cir.), Doc. 1966328.

Under the proposed settlement agreement, EPA would commit to complete its ESA section 7(a) consultation for the RFS rule subsequent to the 2020–2022 RFS Annual Rule that EPA proposed on December 30, 2023. *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes*, 87 FR 80582 (December 30, 2022) (“2023–2025 RFS Set Rule”). If either the Fish and Wildlife Service or the National Marine Fisheries Service issues a biological opinion in connection with this ESA consultation, EPA would also agree to issue a determination addressing any conservation recommendations, terms and conditions of any incidental take statement, and/or reasonable and prudent alternatives within the time frames set forth in that biological opinion. CBD would agree to dismiss with prejudice its challenge to the

2020–2022 RFS Annual Rule within five days of receiving notice from EPA that it has terminated the ESA section 7(a) consultation for the 2023–2025 RFS Set Rule.

The proposed Settlement Agreement also includes standard language regarding resolution of costs and attorneys' fees, stipulation of extensions, lapses in appropriations, disputes in implementation, preservation of Agency discretion, and the CAA section 113(g) process.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CAA.

III. Additional Information about Commenting on the Proposed Settlement Agreement

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0212, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written

comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
Associate General Counsel.

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